

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIEU-MERCI LUBIBA,

Plaintiff,

v.

KING COUNTY SUPERIOR COURT -
FAMILY LAW DIVISION; HON.
MARSHALL FERGUSON; KIESE
WILBURN; DOES 1-5,

Defendants.

CASE NO. 2:25-cv-00799-JNW

ORDER

1. INTRODUCTION

This matter comes before the Court on pro se Plaintiff Dieu-Merci Lubiba's Renewed Emergency Motion for Temporary Restraining Order (TRO), Dkt. No. 17; Application for Court-Appointed Counsel, Dkt. No. 15; and Motion to Seal, Dkt. No. 14. Having carefully reviewed Lubiba's filings, the record, and the law, the Court, for the reasons explained below, DENIES the renewed motion for a TRO; DENIES the application for counsel; and RESERVES decision on the motion to seal.

Additionally, because Lubiba proceeds in forma pauperis (IFP), the Court assesses the sufficiency of Lubiba's complaint, Dkt. No. 13, under 28 U.S.C.

1 § 1915(e)(2)(B) (“Section 1915”). Upon review, the Court FINDS that Lubiba’s
2 complaint fails to state a claim upon which relief may be granted. But rather than
3 dismissing this case outright under Section 1915, the Court GRANTS Lubiba leave
4 to amend his complaint within TWENTY-ONE (21) days of this Order to rectify the
5 defects discussed below. Failure to do so will result in dismissal of this action.

6 **2. BACKGROUND**

7 Lubiba initiated this proceeding on April 30, 2025, by filing his IFP
8 application, Dkt. No. 1; proposed complaint, Dkt. No. 1-2; application for court-
9 appointed counsel, Dkt. No. 1-6, and emergency motion for TRO and preliminary
10 injunction, Dkt. No. 2. Immediately, the Court denied Lubiba’s request for a TRO
11 and preliminary injunction without directly addressing the merits of his claims
12 because he failed to meet the procedural requirements for ex parte relief. Dkt. No.
13 4; *see* Fed. R. Civ. P. 65(b)(1); LCR 65(b)(1).

14 On May 7, after Lubiba corrected several errors in his IFP application (*see*
15 Dkt. Nos. 6, 7, 9, 10), U.S. Magistrate Judge S. Kate Vaughan granted Lubiba’s
16 application for IFP status, Dkt. No. 12, allowing Lubiba’s complaint to be filed on
17 the docket. *See* Dkt. No. 13. But Judge Vaughan recommended that the Court
18 review the sufficiency of Lubiba’s complaint under Section 1915 before issuing
19 summons. *See* Dkt. No. 12.

20 Lubiba sues three defendants: King County Superior Court – Family Law
21 Division; Judge Marshall Ferguson; and Judicial Bailiff Kiese Wilburn. Dkt. No. 13.
22 He brings four claims against them: (1) violation of Title II of the Americans with
23 Disabilities Act (ADA) (42 U.S.C. § 12132); (2) violation of Section 504 of the

1 Rehabilitation Act (29 U.S.C. § 794); (3) retaliation for ADA-protected activity (42
2 U.S.C. § 12203); and (4) deprivation of constitutional due process (42 U.S.C. § 1983).
3 *Id.*

4 The basis of these claims is that Defendants allegedly violated Lubiba's
5 "federally protected rights" by issuing and enforcing rulings adverse to Lubiba
6 throughout his pending family-court custody proceeding. *Id.* He alleges that since
7 March 14, 2025, Judge Ferguson has subjected Lubiba to a "litigation restriction
8 that was entered without notice, hearing, or factual findings," which has effectively
9 "barred" him "from participating in proceedings affecting [his] child's safety, [his]
10 ability to respond to motions, or to correct the record." Dkt. No. 18 at 2. He alleges
11 that on May 28, 2025, he will "face a final... hearing that may permanently modify
12 or terminate [his] parental rights." *Id.* Before that hearing takes place, he seeks an
13 injunction "freezing the enforcement" of Judge Ferguson's interlocutory rulings;
14 "preserv[ing] the status quo with respect to parenting time, custody access, [and]
15 filing rights"; and enjoining Defendants from "taking any further retaliatory,
16 exclusionary, or procedurally suppressive action during the pendency of this
17 litigation." Dkt. No. 13 at 4–5.

18 On May 7, 2025, Lubiba moved to seal, seeking to seal all filings containing
19 Lubiba's identity and contact information, including mailing address, phone
20 number, and email address; medical information; references to his minor child;
21 materials describing his finances; materials describing trauma and harm; and
22 descriptions of legal strategy. Dkt. No. 14. Upon receipt of this motion, the Court
23 provisionally sealed all filings with Lubiba's personal information pending

1 resolution of the motion to seal. Because Lubiba’s filings contain a footer with
2 Lubiba’s contact information, this provisional seal currently encompasses all of
3 Lubiba’s filings to date. *See* Dkt.

4 On the same day—May 7—Lubiba also applied for Court-appointed counsel,
5 arguing that the Court should appoint pro bono counsel to represent him because of
6 the complexity of the case, his limited capacity to litigate, the interests at stake, the
7 likely merit of his claims, and the interests of justice. Dkt. No. 15.

8 On May 22, Lubiba filed a Renewed Emergency Motion for TRO, once again
9 seeking an ex parte TRO “stay[ing] enforcement of all orders issued [in Lubiba’s
10 state family-court proceeding] on or after March 14, 2025” and “enjoin[ing] the May
11 28, 2025 hearing pending further review.” Dkt. No. 17. To distinguish this request
12 from the earlier one that was denied for failure to justify ex parte relief, Lubiba
13 argued that “[n]otice cannot reasonably be given to Defendants because... Plaintiff is
14 barred from filing or serving in state court without prior judicial approval[;] Court
15 staff have ignored or rerouted ADA requests[;] [and] Defendants are courtroom
16 officials who control their own access and coordination.” *Id.* at 2.

17 3. TRO REQUEST

18 The Court denied Lubiba’s previous request for a TRO because of his failure
19 to comply with the procedural requirements governing the issuance of an ex parte
20 TRO. *See* Dkt. No. 4 at 3 (“The Court may issue an ex parte TRO... only if ‘specific
21 facts in an affidavit or a verified complaint clearly show that immediate and
22 irreparable injury, loss, or damage will result to the movant before the adverse
23 party can be heard in opposition’ and the movant certifies in writing ‘any efforts

1 made to give notice and the reasons why it should not be required.” (quoting Fed. R.
2 Civ. P. 65(b)(1))). Lubiba differentiates his renewed request from the previous one
3 by asserting, in a signed filing, that he cannot provide notice to Defendants because,
4 among other reasons, he is “barred from filing or serving in state court without
5 prior judicial approval[.]” Dkt. No. 17 at 2.

6 The Court is not persuaded. To serve all motion papers on Defendants as
7 required by Rule 65 would not require Lubiba to do so on the state-court docket in
8 which he is allegedly subject to a litigation restriction. Lubiba provides no
9 satisfactory reason for issuance of an ex parte TRO. But rather than dismissing the
10 instant request on this procedural ground alone, the Court also finds that—even if
11 the requirements for an ex parte TRO *were* satisfied—Lubiba would not be entitled
12 to such relief.

13 A TRO is an “extraordinary remedy that may only be awarded upon a clear
14 showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council,*
15 *Inc.*, 555 U.S. 7, 22 (2008). “[A] plaintiff seeking a [TRO] must make a clear showing
16 that ‘[they are] likely to succeed on the merits, that [they are] likely to suffer
17 irreparable harm in the absence of preliminary relief, that the balance of equities
18 tips in [their] favor, and that an injunction is in the public interest.’” *Starbucks*
19 *Corp. v. McKinney*, 144 S. Ct. 1570, 1576 (2024) (quoting *Winter*, 555 U.S. at 20).
20 These four elements—the *Winter* factors—apply whenever a preliminary injunction
21 is sought. *Winter*, 555 U.S. at 20. To obtain relief, a plaintiff must “make a showing
22 on all four prongs.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135. (9th
23 Cir. 2011). The first *Winter* factor, “[l]ikelihood of success on the merits[.] is the

1 most important factor[.]” *Edge v. City of Everett*, 929 F.3d 657, 663 (9th Cir. 2019).
2 *See also Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021)
3 (explaining the Ninth Circuit’s “sliding scale” approach to preliminary injunctions,
4 under which “serious questions going to the merits and a balance of hardships that
5 tips sharply towards the plaintiffs can support issuance of a preliminary injunction,
6 so long as the plaintiffs also show that there is a likelihood of irreparable injury and
7 that the injunction is in the public interest”).

8 Upon review, the Court finds that Lubiba fails to satisfy the first *Winter*
9 factor: he fails to raise serious questions on the merits of his claims. In large part,
10 this is because his claims are likely not even justiciable.

11 First, under the Anti-Injunction Act, “[a] court of the United States may not
12 grant an injunction to stay proceedings in a State court except as expressly
13 authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to
14 protect or effectuate its judgments.” 28 U.S.C. § 2283. Lubiba seeks exactly such an
15 injunction—staying state-court proceedings—yet provides no argument about why
16 the Anti-Injunction Act permits the relief sought. *See* Dkt. No. 17 at 5.

17 Second, *Younger* abstention also weighs against exercising jurisdiction over
18 Lubiba’s claims. Under *Younger*, federal courts will not interfere where “(1) there is
19 ‘an ongoing state judicial proceeding’; (2) the proceeding ‘implicate[s] important
20 state interests’; (3) there is ‘an adequate opportunity in the state proceedings to
21 raise constitutional challenges’; and (4) the requested relief ‘seek[s] to enjoin’ or has
22 ‘the practical effect of enjoining’ the ongoing state judicial proceeding.” *Arevalo v.*
23 *Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (quoting *ReadyLink Healthcare, Inc. v.*

1 *State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)). Here, all four of these
2 requirements are met. Lubiba asks the Court to enjoin a pending state-court
3 proceeding implicating the state’s important interest in regulating family relations.
4 Under binding precedent, that proceeding is presumed to afford an adequate
5 opportunity to raise federal-constitutional challenges absent “unambiguous
6 authority to the contrary”—which Lubiba does not provide *See Pennzoil Co. v.*
7 *Texaco, Inc.*, 481 U.S. 1, 15 (1987). Nor does Lubiba show that any exception to
8 *Younger* abstention applies. *See Middlesex Cnty. Ethics Comm. v. Garden State Bar*
9 *Ass’n*, 457 U.S. 423, 435 (1982) (holding that courts should not abstain under
10 *Younger* if the plaintiff shows “bad faith, harassment, or some other extraordinary
11 circumstance that would make abstention inappropriate”).

12 Third, under the *Rooker-Feldman* doctrine, “federal district courts do not
13 have jurisdiction to hear de facto appeals from state-court judgments.” *Carmona v.*
14 *Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010). This doctrine applies to “cases
15 brought by state-court losers complaining of injuries caused by state-court
16 judgments rendered before the district court proceedings commenced and inviting
17 district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi*
18 *Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Lubiba’s claims—challenging Judge
19 Ferguson’s rulings in state court—fall squarely in the scope of *Rooker-Feldman*.
20 Lubiba tries to argue that *Rooker-Feldman* does not apply because Lubiba’s claims
21 challenge “continuing violations” rather than “past state judgments.” Dkt. No. 13 at
22 4. But the Ninth Circuit has made clear that *Rooker-Feldman* applies not only to
23 appeals of final judgments but also to de facto appeals of “interlocutory state court

1 decisions” such as the procedural rulings that Lubiba challenges here. *See Doe &*
2 *Assocs. L. Offs. v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001).

3 Because the Anti-Injunction Act, *Younger* abstention, and *Rooker-Feldman*
4 prevent the Court from exercising jurisdiction over Lubiba’s claims, the Court need
5 not address *other* issues with Lubiba’s claims at this time—such as Eleventh
6 Amendment immunity, judicial and quasi-judicial immunity, and whether the ADA
7 and Rehabilitation Act provide causes of action against individual defendants. In
8 short, Lubiba’s claims appear not to be justiciable and are therefore unlikely to
9 succeed on the merits. On this basis—and for the Rule 65 deficiencies discussed
10 above—Lubiba’s renewed TRO motion is DENIED.

11 4. APPLICATION FOR COURT-APPOINTED COUNSEL

12 Lubiba asks the Court to appoint pro bono counsel to represent him here. No
13 constitutional right to counsel exists for an indigent plaintiff in a civil case unless
14 the plaintiff “may lose his physical liberty if he loses the litigation,” which is not the
15 case here. *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 25 (1981). Even so, the Court
16 may appoint counsel for litigants who are proceeding IFP. *United States v.*
17 *\$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“Section 1915(d)
18 empowers the district court to appoint counsel in civil actions brought in forma
19 pauperis. Appointment of counsel under this section is discretionary, not
20 mandatory.”). But the Court lacks authority to compel counsel to provide
21 representation. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). The
22 decision whether to request pro bono counsel rests within “the sound discretion of
23

1 the trial court and is granted only in exceptional circumstances.” *Agyeman v. Corr.*
2 *Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004).

3 To decide whether such “exceptional circumstances” exist, the Court must
4 evaluate “the likelihood of success on the merits [and] the ability of the [plaintiff] to
5 articulate [her] claims pro se in light of the complexity of the legal issues involved.”
6 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v.*
7 *Look*, 718 F.2d 952, 954 (9th Cir. 1983)). The factors must be viewed together;
8 neither factor is dispositive. *Id.* Whether a pro se plaintiff would fare better with
9 help from counsel is not the test. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir.
10 1997), *on reh’g en banc*, 154 F.3d 952 (9th Cir. 1998).

11 Lubiba—like *all* pro se litigants—will face challenges bringing this case
12 alone. But his circumstances are not exceptional. Through his various filings, he has
13 shown a basic grasp of court procedure and an ability to convey his positions in
14 writing. But as discussed above, he has not shown a likelihood of success on the
15 merits. This problem stems not from inartful pleading but from material defects in
16 his complaint that likely prevent the Court from exercising jurisdiction over his
17 claims. On this basis, Lubiba’s motion for appointment of counsel is DENIED.

18 5. MOTION TO SEAL

19 To overcome the strong presumption of public access to court records, a
20 motion to seal must satisfy *both* the procedural requirements set forth in LCR
21 5(g)(3)(A) *and* the substantive requirements rooted in LCR 5(g)(3)(B) and Ninth
22 Circuit case law. *See generally Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
23 1172, 1178–83 (9th Cir. 2006).

1 Lubiba's motion to seal fails on both fronts. Dkt. No. 14. Procedurally, it
2 includes no meet-and-confer certification as required by LCR 5(g)(3)(B). On this
3 basis, it is defective and cannot be granted. And substantively, it sweeps far wider
4 than appropriate. To be sure, the Court sees no problem with Lubiba's request to
5 maintain the privacy of his medical and ADA-related information; references to his
6 minor child; materials describing his financial situation; and materials describing
7 trauma and harm. *See* LCR 5, 5.2. But by seeking to maintain the secrecy of his
8 *contact information*—and then including that contact information on every page of
9 his filings—Lubiba has rendered this entire case invisible to the public. Lubiba's
10 assertion that “[d]isclosure would risk misuse of mailing data, surveillance, or
11 further harassment” is too conclusory to justify such invisibility. Dkt. No. 14 at 6.

12 That said, the Court will not deny Lubiba's motion to seal at this time
13 because the Court recognizes that Lubiba cannot meet and confer with opposing
14 counsel until service of process has been effected—and service of process cannot be
15 effected until the Court's Section 1915 review is complete and summons has issued.
16 As such, the Court RESERVES decision on the motion to seal.

17 Still, the Court will not indefinitely maintain all filings under seal merely
18 because of Lubiba's conclusory assertion that harm will befall him if his contact
19 information is publicized. Thus, the Court ORDERS Lubiba, within TWENTY-ONE
20 (21) days of this Order, to: (1) file redacted versions of his filings in order to conceal
21 his private information while publicizing non-private information; (2) file an
22 amended motion to seal that does not seek to maintain his contact information
23 under seal; or (3) show cause as to why the materials presently under provisional

1 seal should remain sealed while Lubiba’s motion to seal is pending. If Lubiba fails
2 to do so, the Court will unseal all filings that, in the Court’s discretion, do not merit
3 secrecy.

4 6. SECTION 1915 REVIEW

5 When a plaintiff proceeds IFP, Section 1915 requires the Court to dismiss the
6 action if the Court determines it fails to state a claim on which relief may be
7 granted. 28 U.S.C. § 1915(e)(2)(B). To survive Section 1915 review, a complaint
8 must meet the requirements set forth in Rule 8 of the Federal Rules of Civil
9 Procedure, including “a short and plain statement of the grounds for the court’s
10 jurisdiction” and “a short and plain statement of the claim showing that the pleader
11 is entitled to relief[.]” Fed. R. Civ. P. 8. While Rule 8 does not demand detailed
12 allegations, “it demands more than an unadorned, the defendant-unlawfully-
13 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint
14 “must contain sufficient factual matter, accepted as true, to state a claim to relief
15 that is plausible on its face.” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
16 570 (2007)). A claim is plausible if “the plaintiff pleads factual content that allows
17 the court to draw the reasonable inference that the defendant is liable for the
18 misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

19 At the same time, “[p]leadings must be construed so as to do justice.” Fed. R.
20 Civ. P. 8(e). Thus, a “document filed pro se is to be liberally construed and a pro se
21 complaint, however inartfully pleaded, must be held to less stringent standards
22 than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94
23 (2007) (citations omitted). Courts are not to “dismiss a pro se complaint without

1 leave to amend unless ‘it is absolutely clear that the deficiencies of the complaint
 2 could not be cured by amendment.’” *Rosati v. Igbino*, 791 F.3d 1037, 1039 (9th Cir.
 3 2015) (citing *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012)). But even so, the
 4 duties imposed on the Court by Section 1915 are unwavering—and when an IFP
 5 plaintiff fails to state a claim, the action must be dismissed.

6 Upon review, the Court finds numerous issues with Lubiba’s complaint that
 7 prevent it from passing muster under Section 1915. As discussed above, the Anti-
 8 Injunction Act, *Younger* abstention, and *Rooker-Feldman* preclude federal
 9 jurisdiction over Lubiba’s claims. These defects are likely fatal. But rather than
 10 dismissing Lubiba’s complaint outright, the Court GRANTS him TWENTY-ONE
 11 days to submit an amended complaint or otherwise show cause as to why the Court
 12 should exercise jurisdiction over his claims and allow summons to issue. Failure to
 13 do so will result in dismissal of this lawsuit under Section 1915.

14 7. CONCLUSION

15 For the reasons explained above, the Court ORDERS as follows:

- 16 • Lubiba’s Renewed Emergency Motion for Temporary Restraining
 17 Order is DENIED. Dkt. No. 17.
- 18 • Lubiba’s Application for Court Appointed Counsel is DENIED. Dkt.
 19 No. 15.
- 20 • The Court RESERVES decision on Lubiba’s Motion to Seal. Dkt. No.
 21 14. The provisional seal protecting all filings with Lubiba’s contact
 22 information remains in effect. However, the Court will not maintain
 23 this provisional seal indefinitely. The Court ORDERS Lubiba, within

TWENTY-ONE (21) days of this Order, to (1) submit redacted versions of his filings; (2) file an amended motion to seal that does not seek to maintain his contact information under seal; or (3) show cause as to why the materials presently under provisional seal should remain sealed while the motion to seal is pending.

- Because of the justiciability issues discussed above, the Court FINDS that Lubiba's Complaint, Dkt. No. 13, does not state a claim upon which relief may be granted. But rather than dismissing this case outright under 28 U.S.C. § 1915(e)(2)(B), the Court GRANTS Lubiba leave to amend the complaint within TWENTY-ONE (21) days of this Order to address the defects discussed above. Failure to do so will result in dismissal of this case.

It is so ORDERED.

Dated this 27th day of May, 2025.



Jamal N. Whitehead
United States District Judge